

Fair Labor Standards Act New Regulations Webinar



SARAH LOQUIST & DONNA WHITEMAN
KASB LEGAL DEPARTMENT
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Fair Labor Standards Act



Employees who work over 40 hours in a week must be paid overtime...unless they are exempt employees.



- Part I - Who is Exempt/Non-Exempt?
- Part II – What Are New FLSA Changes?
- Part III – What Should Schools Be Doing?

White Collar Exemptions Not Eligible for Overtime

- Executive employees (29 C.F.R. § 541.100)
- Administrative (29 C.F.R. § 541.200-204)
- Professional employees (29 C.F.R. § 541.300)
- Certain computer employees (29 C.F.R. § 541.400)
- Highly compensated employees (29 C.F.R. § 541-601)
- Teachers are exempt

Three Tests to Qualify for “White Collar” Exemption(s)

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- Salary Basis
- Job Duties
- Salary Level



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Three Tests for Overtime Exemption

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- Salary Basis Test – No Change
- Duties Test – No Change
 - Executive
 - Administrative
 - Professional
 - Outside Sales
 - Computer
- Minimum Salary Test – Major Change



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Executive Employee



Paid not less than \$455.00 per week? (\$913 new level)	Y	N
Paid on a salary basis?	Y	N
Primary duty managing school district or customarily recognized department or subdivision of school district?	Y	N
Regularly and customarily supervises two or more employees in department executive is managing?	Y	N
Suggestions and recommendations about hiring, firing, advancement, promotion or any other tangible employment action with regard to other employees are given particular weight?	Y	N

Executive Duties Test

- **Primary duty** is **management** of the school or of customarily recognized department or subdivision
 - Over 50% of time on exempt work
 - customarily and regularly directs work of two or more other employees and
 - *authority to hire or fire other employees* or
 - whose suggestions and recommendations as to hiring, firing, advancement, promotion or other changes of status of other employees are given particular weight.

Administrative Employee

Paid not less than \$455.00 per week? (\$913 new level)	Y	N
Paid on salary basis?	Y	N
Primary duty consists of performance of office or non-manual work directly related to management or general business operations of school district?	Y	N
Primary duty requires exercise of discretion and independent judgment with regard to matters of significance?	Y	N



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Examples of Administrative Exemptions

- Academic Administrators (specific exemption for administrative employees whose primary duty is performing administrative functions directly related to academic instruction or training in an education establishment)
- Business managers
- Human Resources and Employee Benefits managers, but generally not a Personnel Clerk who “screens” applicants for minimum qualifications and fitness for employment.
- Public Relations/Communications directors

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Professional Employee



Paid not less than \$455.00 per week? (\$913 new level) (Not Required for Teachers)	Y	N
Paid on a salary basis? (Not Required for Teachers)	Y	N
Does employee's primary duty consist of performance of work that requires knowledge of an advanced type in field of science or learning customarily acquired?	Y	N

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Computer Professional



Is employee paid at least \$455 per week (\$913 new level) on salary basis or paid on hourly basis, at rate not less than \$27.63 an hour.	Y	N
Paid on salary basis (unless hourly)?	Y	N
Is employee employed as computer systems analyst, computer programmer, software engineer or other similarly skilled worker in computer field performing duties described below?	Y	N
Does employee's primary duty consist of: Application of systems analysis techniques and procedures to determine hardware, software or system functional specifications; <ul style="list-style-type: none"> ▪ The design, development, documentation, analysis, creation, testing or modification of computer systems or programs based on and related to user or system design specifications; ▪ The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or ▪ A combination of above. 	Y	N

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“Computer Employee” Exemption

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Current duties test is relatively specific, requiring high level work, such as computer analysis and/or programming. (29 C.F.R. § 541.400)

Not exempt:

- Computer operators or employees engaged in computer manufacturing, repair, or maintenance
- Employees whose work highly depends on or is facilitated by the use of computers and computer software programs, but who do not perform the computer analysis or programming duties

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PART II

What Are The New FLSA Changes?

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Three Specific Changes to Overtime Regulations

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1. Increase in salary floor for full-time exempt workers from \$23,660 per year (\$455 per week) to \$47,476 per year (\$913 per week)
2. The new annual compensation for highly compensated employees will increase from \$100,000 to \$134,004
3. Update of salary and compensation levels will be every 3 years beginning Jan. 1, 2020

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Non discretionary Bonuses

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- Employers will be allowed to include nondiscretionary bonuses to satisfy up to 10% of the new salary threshold, but:
 - The nondiscretionary bonuses must be paid on a minimum of quarterly basis
 - If employees do not meet the threshold in any given quarter through base and nondiscretionary incentive pay, the employer is required to provide a catch-up payment to meet the threshold

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Changes Specifically Address White Collar Exemptions

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Current FLSA regs. - Employee must satisfy 3 tests to be considered exempt from overtime requirements

1. Be salaried, pay predetermined, fixed salary not subject to reduction because of variation in quality or quantity of work performed (salary basis test)
2. Be paid at least a specific salary threshold;
 - current \$455 per week, \$23,660 annual
 - Effective December 1, 2016, \$913 per week, \$47,476 annual (salary level test)
3. Primarily perform executive, administrative, or professional duties (duties test) (29 CFR 541.2)

Totally exempt employees – teachers, doctors, attorneys, not subject to salary basis or salary level test

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Raise Minimum Salary Level for White Collar Exemptions

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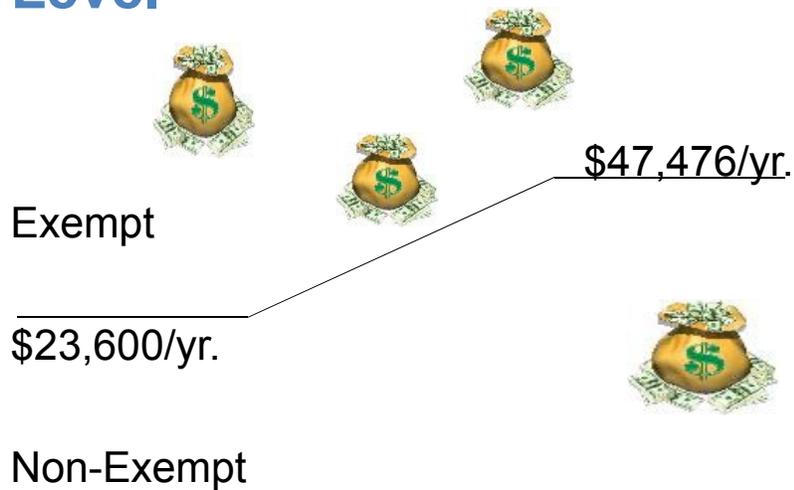
In a nutshell, the new rule change will result in some executive, administrative, professional and certain computer employees to fall below the new minimum salary level necessary to maintain exempt status.



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Raise the Minimum Salary Level

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When will New Regulations Become Final?

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- December 1, 2016.
- Final regulations issued May 18, 2016
- H.R. 4773
- S. 2707

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PART III

What Should Schools Be Doing?

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What to do Now

- Identify which positions might be converted from exempt to non-exempt (i.e., salaried to hourly)
- Compare costs of overtime to costs of adding additional support positions
- Explain to employees why these changes are happening can reduce resentment
- All employers are in the same spot
- Inform employees that this change is required to comply with the law

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Salary Level Increase

Likely school district personnel affected by this salary level increase:

- Personnel with “manager”, “supervisor”, “coordinator”, “director”, etc., in their titles
- Other non-educator supervisors
- Mid-level personnel (not necessarily in management)
- No school district department is immune:
 - Food Service, Custodial, Transportation, Finance, Physical Plant, Special Education, Student Services, Human Resources, etc.

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New Minimum Salary Level Test in Action

- In Kansas School District, Cafeteria Manager Smith is paid a salary of \$40,000/yr.
- What happens to Manager Smith when the new minimum salary level goes into effect?

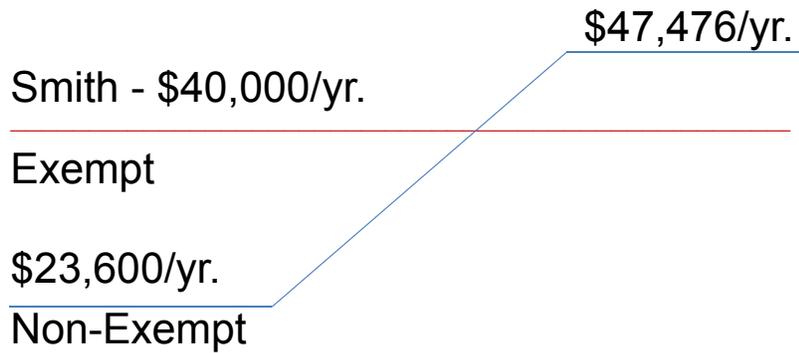
Manager Smith



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Minimum Salary Level Test in Action

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Minimum Salary Level Test in Action

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What happens to Manager Smith, if there is no change in title, job duties, or wages?

Manager Smith:

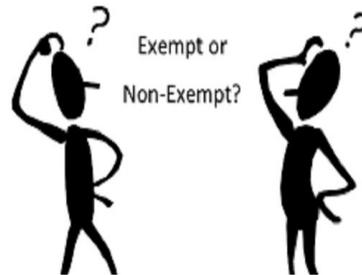
- Loses her exempt status as of the effective date of the Final Rule
- Will then be eligible for overtime

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Improper Employee Classification

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- What if incorrectly classified as exempt and become nonexempt?
- Will school
 - Reduce hours to avoid paying overtime?
 - Hire more workers to fill gap?
 - Reduce hourly pay so worker's hourly wages plus overtime equal correct salaries?



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“To Do” List

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Review all employees with current salaries between the entire range:

\$23,660/yr.
(current)

\$47,476/yr.
(As of 12-1-16)

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Classification Audits and Job Analyses

- Important to review jobs/classifications
- Review positions that are exempt, nonexempt
- Start with and end with accurate job descriptions (for several reasons)
- Review criteria and methodology used for compensation and performance appraisal systems
- Job analysis provides employer with good faith defense, objective employment related decisions

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- FLSA decisions are made depending on the job description and duties in each specific employee's case
- Please call KASB's School Attorneys

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QUESTIONS

- Lori Church – Ichurch@kasb.org
- Sarah Loquist – sloquist@kasb.org
- David Shriver – dshriver@kasb.org
- Luke Sobba – Isobba@kasg.org
- Angie Stallbaumer – astallbaumer@kasb.org
- Donna Whiteman – dwhiteman@kasb.org

Toll Free: 1.800.432.2471 or
785-276-3600